UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 21, 1999

Jason D. Wallach
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Washington, DC 20037-1526

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Dear Mr. Wallach:

This letter is in response to your June 10, 1999 letter, in which you request guidance regarding the applicability of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) to your client's facility. Specifically, you are asking for guidance on how your client should consider heap leach pad ore materials that have been beneficiated and then neutralized and reused to create on-site roads and to stem drill holes prior to blasting.

In follow-up conversations and a June 15, 1999 facsimile you further explained the activities taking place at your client's facility. The ore material, which is used to create haul roads and which must meet certain grade and size criteria, is laid on the ground in a thickness ranging between two and six inches. According to the facsimile, no additional surfacing material is used in constructing the roads. The facsimile further states that the ore material used to stem drill holes must also meet proper grade and size criteria. However, like the ore material used to create the haul roads, the ore material used to stem the drill holes is placed directly on the ground. Actually, for this application, the ore material is loaded into blast holes to contain the explosive energy. For both the roads and the drill holes, the facsimile states that any oversized material is removed to meet a size specification of -.75 inches.

According to your letter the ore material has been beneficiated to recover precious metals, and neutralized to meet state regulatory requirements. You further provide that the state regulatory agency has repeatedly approved the use of the ore material for the specific applications described above. The ore material, according to your letter, is used instead of mining new gravel or aggregate materials.

Based on this information, you are asking for guidance on how your client's facility should consider the toxic chemicals in the leach pad materials used for these applications. In particular, you want to know if the *de minimis* exemption applies to the toxic chemicals in the leach pad materials used on-site to create roads and to stem drill holes prior to blasting.

As you correctly point out in your letter, the eligibility of toxic chemicals in materials for the *de minimis* exemptions, in part, "turns on whether or not they are being managed or used 'as a waste.'" Consider, for example, the byproduct ash that is generated by electricity generating facilities (EGFs) and used for a variety of applications. Page 3-49 of the 1998 EPCRA Section

313 Industry Guidance for Electricity Generating Facilities (January 1999, EPA 745-B-99-003) provides the following:

> A facility distributes ash (which meets industry specifications) containing EPCRA Section 313 chemicals into commerce for use in the manufacture of concrete. This activity constitutes a processing activity, and the *de minimis* exemption applies to amounts of EPCRA Section 313 chemicals in the ash distributed into commerce, and to releases and other waste management activities associated with this processing activity.
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> EPCRA Section 313 chemicals in ash sent off-site for use as roadfill, landfill, and in mining reclamation are being managed as a waste; therefore they are not eligible for the *de minimis* exemption.

The toxic chemicals in ash being sent off-site for use as roadfill, landfill, and in mining reclamation are being disposed of off-site. Therefore, the toxic chemicals in the ash are being managed as a waste and these toxic chemicals are not eligible for the *de minimis* exemption. However, the toxic chemicals in the ash transferred off-site for incorporation into concrete are being processed because the ash, which must meet certain specifications, is being distributed into commerce and is being mixed, blended, and incorporated into concrete. Therefore, these toxic chemicals should be considered toward processing thresholds. The *de minimis* exemption may be considered for toxic chemicals in ash that is transferred off-site for incorporation into concrete.

Similar to the ash used as roadfill, the treated ore material from the leach pad that is laid on the ground, or placed in the ground, to create haul roads and to stem drill holes prior to blasting is being disposed. Therefore, while these on-site applications for the treated ore material constitute an "otherwise use"[1] of the toxic chemicals contained in the ore material, these specific applications also constitute a waste management activity and should be reported as a release to land. And because these ore materials are being managed as a waste, the toxic chemicals in these materials are not eligible for the *de minimis* exemption. "The *de minimis* exemption cannot be

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[1] Of course, if the toxic chemicals in the ore materials were already included in the otherwise use threshold determinations due to their presence in the leach pad, then these same toxic chemicals do not have to be considered again for the same otherwise use threshold determinations when these chemicals are used to create roads or to stem drill holes prior to blasting. However, if any amount of a toxic chemical in these ore materials was incorporated into the dore, then the entire quantity of that toxic chemical in the process stream (and this includes the leach pad) should have been considered "processed" and the entire quantity of the toxic chemical, including the quantity in the leach pad, should have been applied toward the processing threshold determination for that chemical. Therefore, when this toxic chemical from beneficiated leach pad ore materials is used to create roads or to stem drill holes, it is being otherwise used for the first time and should be considered toward the otherwise use threshold.

applied to toxic chemicals in a waste even if the waste is being processed or otherwise used." (Q&A 315 in the 1998 EPCRA Section 313 Questions and Answers document; December 1998, EPA 745-B-98-004).

I hope this information is helpful in making threshold determinations and release and other waste management calculations for section 313 of EPCRA. If you have any other questions, or desire further information, please call either Larry Reisman at 202.260.2301 or me at 202.260.9592.

Sincerely,

Maria J. Doa, Ph.D., Chief
Toxics Release Inventory Branch